



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC786]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Navy Construction at Portsmouth Naval Shipyard, Kittery, Maine

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization.

SUMMARY: NMFS received a request from the U.S. Navy (Navy) for the renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to construction activities associated with the multifunctional expansion of Dry Dock 1 project at Portsmouth Naval Shipyard in Kittery, Maine. These activities are identical to those covered by the current authorization, and consist of a subset of activities that will not be completed prior to its expiration. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than *[insert date 15 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to *ITP.tyson.moore@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments, including all attachments, must not exceed a 25-megabyte file size.

Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Reny Tyson Moore, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not

intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by

the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA);
2. The request for renewal must include the following:
 - An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take);
 - A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and
3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at:

www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals. Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this

proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has preliminarily determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

History of Request

On April 1, 2022, NMFS issued an IHA to the Navy to take marine mammals incidental to construction activities associated with the multifunctional expansion of Dry Dock 1 project (also referred to as P-381) at Portsmouth Naval Shipyard in Kittery, Maine (April 6, 2022; 87 FR 19886), effective from April 1, 2022 through March 31, 2022. On January 31, 2023, NMFS received an application for the renewal of that initial IHA. NMFS received a revised application for the renewal IHA on February 24, 2023. As described in the application for renewal IHA, the activities for which incidental take is

requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

Description of the Specified Activities and Anticipated Impacts

Multifunctional Expansion of Dry Dock 1 (P-381) is 1 of 3 projects that support the overall expansion and modification of Dry Dock 1, located in the western extent of the Portsmouth Naval Shipyard. The 2 additional projects, construction of a super flood basin (P-310) and extension of portal crane rail and utilities (P-1074), are currently under construction. In-water work associated with these projects was completed under separate IHAs issued by NMFS in 2019 (84 FR 24476; May 28, 2019), and in a renewal of the 2019 IHA (86 FR 14598; March 17, 2021). The projects have been phased to support Navy mission schedules. P-381 will be constructed within the same footprint of the super flood basin over an approximate 7-year period, during which 5 years of in-water work will occur. The initial IHA authorized takes for marine mammals during the first year of in-water construction for P-381 occurring from April 2022 through March 2023. All work beyond year 1 has been addressed in proposed incidental take regulations (January 18, 2023; 88 FR 3146).

The purpose of the proposed project, Multifunctional Expansion of Dry Dock 1 (P-381), is to modify the super flood basin to create two additional dry docking positions (Dry Dock 1 North and Dry Dock 1 West) in front of the existing Dry Dock 1 East. The super flood basin provides the starting point for the P-381 work (see Figure 1-2 of the Navy's application for the initial IHA). This renewal request is to cover a subset of the activities covered in the initial IHA that will not be completed during the effective IHA period due to project delays (see **Detailed Description of the Activity** for specific

activities to be covered in the proposed renewal IHA). This includes the preparation of the walls and floors of the super flood basin to support the placement of the monoliths and the construction of the two dry dock positions.

Construction activities that could affect marine mammals are limited to in-water pile driving and removal activities, rock hammering, rotary drilling, and down-the-hole (DTH) hammering. Under the initial IHA, Level A harassment and Level B harassment was authorized for harbor porpoises (*Phocoena phocoena*), harbor seals (*Phoca vitulina*), gray seals (*Halichoerus grypus*), harp seals (*Pagophilus groenlandicus*) and hooded seals (*Cystophora cristata*). Neither the Navy nor NMFS expects serious injury or mortality to result from this activity and, therefore, a renewal IHA is appropriate.

The following documents are referenced in this notification and include important supporting information:

- Initial 2022 final IHA (April 6, 2022, 87 FR 19886);
- Initial 2022 proposed IHA (March 3, 2022, 87 FR 11860);
- Initial IHA application and References (available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-construction-portsmouth-naval-shipyards-kittery-maine>); and
- Application Addendum Memo (October 31, 2022; available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-construction-portsmouth-naval-shipyards-kittery-maine-0>).

Detailed Description of the Activity

A detailed description of the construction activities for which take is proposed here may be found in the notices of the proposed (March 3, 2022, 87 FR 11860) and final (April 6, 2022, 87 FR 19886) IHAs for the initial authorization as well as in the Application Addendum Memo (submitted to NMFS on October 31, 2023), which described project modifications and shifting Fleet submarine schedules. As previously

mentioned, this request is for a subset of the activities authorized in the initial IHA that would not be completed prior to its expiration due to project delays. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. Table 1 describes the status of all activities covered under the initial IHA as well as the amount of activities proposed to be covered under the renewal IHA. The proposed renewal would be effective for a period not exceeding one year from the date of expiration of the initial IHA.

Table 1. Status of Pile Driving and Drilling Activities

Activity	Total Amount	Activity Component	Method	Daily Production Rate	Number Installed under Initial IHA	Number Remaining to be Installed under Renewal IHA	Total Production Days	Number of Production Days under Renewal IHA
Center Wall - Install Foundation Support Piles	20 drilled shafts ¹	Install 102-inch diameter outer casing	Rotary Drill	1 shaft/day 1 hour/day	14	6	20	6
		Pre-drill 102-inch diameter socket	Rotary Drill	1 shaft/day 9 hours/day	14	6	20	6
		Remove 102-inch outer casing	Rotary Drill	1 casing/day 15 minutes/casing	10	10	20	10
		Drill 78-inch diameter shaft	Cluster drill DTH	6.5 days/shaft 10 hours/day	2	18	130	117
Center Wall – Install Diving Board Shafts ²	18 drilled shafts	Install 102-inch diameter outer casing	Rotary Drill	1 shaft/day 1 hour/day	0	0	18	0
		Pre-drill 102-inch diameter socket	Rotary Drill	1 shaft/day 9 hours/day	0	0	18	0
		Remove 102-inch outer casing	Rotary Drill	1 casing/day 15 minutes/casing	0	0	18	0
		Drill 78-inch diameter shaft	Cluster drill DTH	7.5 days/shaft 10 hours/day	0	0	135	0
Center Wall – Access Platform Support ³	38 drilled shafts	Install 102-inch diameter outer casing	Rotary Drill	1 shaft/day 1 hour/day	0	0	38	0
		Pre-drill 102-inch diameter socket	Rotary Drill	1 shaft/day 9 hours/day	0	0	38	0
		Remove 102-inch outer casing	Rotary Drill	1 casing/day 15 minutes/casing	0	0	38	0
		Drill 78-inch diameter shaft	Cluster drill DTH	3.5 days/shaft 10 hours/day	0	0	38	0
Center Wall – Temporary Launching Piles	6 drilled shafts	42-inch diameter shaft	Mono-hammer DTH	1 shaft/day 10 hours/day	6	0	6	0
Center Wall Tie Downs ³	Install 36 rock anchors	9-inch diameter holes	Mono-hammer DTH	2 holes/day 5 hours/hole	0	0	18	0

Center Wall – Access Platform Tie Downs ³	Install 18 rock anchors	9-inch diameter holes	Mono-hammer DTH	2 holes/day 5 hours/hole	0	0	9	0
Center Wall – Install Tie-In to Existing West Closure Wall	16 sheet piles	28-inch wide Z-shaped sheets	Impact with initial vibratory set	4 piles/day 5 minutes and 300 blows/pile	0	16	4	4
Berth 11 End Wall - Install Secant Pile Guide Wall	60 sheet piles	28-inch wide Z-shaped sheets	Impact with initial vibratory set	8 piles/day 5 minutes and 300 blows/pile	60	0	8	0
Berth 1 – Remove Granite Block Quay Wall ⁴	610 cy	Granite block demolition	Hydraulic rock hammering	2.5 hours/day	0	0	NA	0
P-310 West Closure Wall – Remove Closure Wall	238 sheet piles	18-inch wide flat-sheets	Vibratory extraction	4 piles/day 5 minutes/pile	0	238	60	60
P-310 West Closure Wall - Mechanical Rock Excavation	985 cy	Excavate bedrock	Hydraulic rock hammering	9 hours/day	0	985	77	77
P-310 West Closure Wall - Mechanical Rock Excavation	Drill 500 relief holes	4-6 inch holes	Mono-hammer DTH	25 holes/day 24 minutes/hole	0	500	20	20
	Drill 46 rock borings (50 cy)	42-inch diameter casing	Mono-hammer DTH	2 borings/day 5 hours/boring	46	0	24 ⁵	0
West closure wall- Berth 11 Abutment – Install Piles	Drill 28 shafts	42-inch diameter casing	Mono-hammer DTH	1 shaft/day 10 hours/day	0	28	28	28
Berth 11 – Remove Shutter Panels	112 panels	Demolish shutter panels	Hydraulic rock hammering	5 hours/day	92	20	56	10
Berth 11 Face - Mechanical Rock Removal at Basin Floor	3,500 cy	Excavate Bedrock	Hydraulic rock hammering	12 hours/day	700	2800	100	80
	Drill 1,277 relief holes ¹	4-6 inch holes	Mono-hammer DTH	27 holes/day 22.2 minutes/hole	300	977	48	37
Berth 11 Face - Mechanical Rock at Abutment	Drill 365 rock borings (1,220 cy)	42-inch diameter casing	Mono-hammer DTH	2 borings/day 5 hours/boring	0	365	183	183

Dry Dock 1 North Entrance - Drill Tremie Tie Downs	Drill 50 rock anchors ¹	9-inch holes	Mono-hammer DTH	2 holes/day 2 hours/hole	0	25	25	25
Dry Dock 1 North Entrance - Install Temporary Cofferdam	Install 48 sheet piles ¹	28-inch wide Z-shaped sheets	Impact with initial vibratory set	8 sheets/day 5 minutes and 300 blows/pile	0	48	6	6
Berth 1 – Remove Sheet Piles	Remove 12 sheet piles	25-inch wide Z-shaped sheets	Hydraulic rock hammering	6 hours/day	0	12	3	3
Berth 1 Top of Wall - Demolition For Waler Installation ⁶	30 lf	Mechanical concrete demolition	Hydraulic rock hammering	10 hours/day	NA	NA	NA	NA
Berth 1 Mechanical Rock Removal at Basin Floor ⁷	200 cy	Excavate Bedrock	Hydraulic rock hammering	13 cy/day 12 hours/day	0	200	39	39
Removal of Berth 1 Emergency Repair Sheets ⁷	108 sheet piles	25-inch wide Z-shaped sheets	Vibratory extraction	6 piles/day 5 minutes/pile	0	108	18	18
Removal of Berth 1 Emergency Repair Tremie Concrete ⁷	500 cy	Mechanical concrete demolition	Hydraulic rock hammering	4 hours/day	0	500	15	15
Totals					1,244	6,862	1,278	744

¹The amount of this activity was adjusted in a memo describing project modifications and shifting Fleet submarine schedules that was submitted to NMFS on October 31, 2022.

The memo can be found at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-construction-portsmouth-naval-shipyards-kittery-maine-0>.

²The schedule for this work shifted as described in the aforementioned memo submitted to NMFS on October 31, 2022. This activity is now addressed in the proposed rulemaking/LOA (January 18, 2023; 88 FR 3146).

³These activities are no longer needed.

⁴This activity is complete; it was performed above the water line. The underwater portion of this activity is addressed in the proposed rulemaking/LOA (January 18, 2023; 88 FR 3146).

⁵An additional day was added to account for equipment repositioning.

⁶This activity is complete; it was performed above the water line.

⁷This activity was added to the initial IHA in the aforementioned memo submitted to NMFS on October 31, 2022.

Description of Marine Mammals in the Area of Specified Activities

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the Notice of the Proposed IHA for the initial authorization (March 3, 2022, 87 FR 11860). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the **Description of the Marine Mammals in the Area of Specified Activities** contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which the authorization of take is proposed here may be found in the Notice of the Proposed IHA for the initial authorization (March 3, 2022, 87 FR 11860). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the Notices of the Proposed (March 3, 2022, 87 FR 11860) and Final (April 6, 2022, 87 FR 19886) IHAs for the initial authorization. Specifically, the marine mammal density and occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken and types of take remain unchanged from the previously issued IHA.

Since the initial IHA was issued, NMFS' updated its recommendations on source

pressure levels (SPL) to use when evaluating DTH systems (see

[https://media.fisheries.noaa.gov/2022-](https://media.fisheries.noaa.gov/2022-11/PUBLIC%20DTH%20Basic%20Guidance_November%202022.pdf)

[11/PUBLIC%20DTH%20Basic%20Guidance_November%202022.pdf](https://media.fisheries.noaa.gov/2022-11/PUBLIC%20DTH%20Basic%20Guidance_November%202022.pdf); NMFS, 2022).

NMFS suggests that the root mean square (RMS) SPLs should increase from 167 dB to 174 decibels (dB) for DTH cluster hammering of 78-inch piles, and that the RMS SPLs should decrease for DTH mono-hammering of 4- to 6-inch piles from 167 dB to 156 dB.

These changes would increase the Level B harassment distances from 13,594 meters (m) (44,600 feet (ft)) to 39,811 m (130,614 ft) for cluster hammering of 78-inch piles, and from 13,594 m (44,600 ft) to 2,512 m (8,241 ft) for mono-hammering of 4- to 6-inch piles. However, because the region of influence (ROI) for this project is very small due to land masses in the proposed action area that preclude sound from travelling more than approximately 870 m (3,000 ft) from the source (see Figure 2 in the Notice of the Proposed IHA for the initial authorization; March 3, 2022, 87 FR 11860), the area of the Level B harassment isopleth remains unchanged (*i.e.*, 0.417 kilometers squared (km²), 0.161 miles squared (mi²)).

NMFS has also reevaluated the data available on rock hammering activities since the initial IHA was issued, and has proposed that the RMS SPL increase from 184 dB to 186 dB and that the single strike Sound Exposure Level (SEL_{ss}) decrease from 175 dB to 171 dB (January 18, 2023, 88 FR 3146). The proposed RMS values increase the Level B harassment distance and area for rock hammering activities from 398 m (1,306 ft) and 0.165 km² to 541 m (1,775 ft) and 0.278 km², respectively. The Level A harassment zone remains unchanged (0.417 km², 0.161 mi²) due to the size of the ROI and influence of land truncating sound near the proposed action area. Given the Level A harassment zone is larger than the Level B harassment zone, no additional takes by Level B harassment are proposed as they are already proposed as takes by Level A harassment.

Tables 2, 3, and 4 provide the calculated proposed take by Level A and Level B

harassment for harbor porpoises, harbor seals, and grey seals, respectively. Given that a subset of the initially covered activities would be occurring, the number of days of operation, and thus number of takes, has been reduced for each species. Note that the final take numbers differ slightly from those provided in the Navy's request for renewal of the IHA based on rounding errors found in the request. Further, in the initial IHA that was issued, takes by Level B harassment for harbor seals and grey seals were increased to more accurately reflect the number of seal sightings reported in recent monitoring reports. However, this adjustment has not been requested or made for the proposed renewal IHA based on the reduction in the number of construction days. The take calculation for hooded and harp seals remains the same from the initial IHA (see the Notices of the Proposed (March 3, 2022, 87 FR 11860) and Final (April 6, 2022, 87 FR 19886) IHAs for the initial authorization for more information).

Table 2. Calculated Take by Level A and Level B Harassment of Harbor Porpoise by Project Activity for the Proposed Renewal IHA

Activity	Total Amount	Method	Number of Production Days under Renewal IHA	Density	Level A Harassment Zone (km ²)	Takes by Level A Harassment	Level B Harassment Zone (km ²)	Take by Level B Harassment
Center Wall - Install Foundation Support Piles	20 drilled shafts	Rotary Drill	6	0.4	0.00001	0	0.41742	0
		Rotary Drill	6	0.4	0.00025	0	0.41742	0
		Rotary Drill	10	0.4	0.00000	0	0.41742	0
		Cluster drill DTH	117	0.4	0.41742	2	0.41742	0
Center Wall – Install Tie-In to Existing West Closure Wall	16 sheet piles	Initial vibratory set	4	0.4	0.00045	0	0.41742	0
		Impact	4	0.4	0.40341	0	0.41742	0
P-310 West Closure Wall – Remove Closure Wall	238 sheet piles	Vibratory extraction	60	0.4	0.00014	0	0.41742	1
P-310 West Closure Wall - Mechanical Rock Excavation	985 cy	Hydraulic rock hammering	77	0.4	0.41742	1	0.277858	0
P-310 West Closure Wall - Mechanical Rock Excavation	Drill 500 relief holes	Mono-hammer DTH	20	0.4	0.04811	0	0.41742	0
West closure wall- Berth 11 Abutment – Install Piles	Drill 28 shafts	Mono-hammer DTH	28	0.4	0.41742	0	0.41742	0
Berth 11 – Remove Shutter Panels	112 panels	Hydraulic rock hammering	10	0.4	0.41742	0	0.277858	0

Table 3. Calculated Take by Level A and Level B Harassment of Harbor Seal by Project Activity for the Proposed Renewal IHA

Activity	Total Amount	Method	Number of Production Days under Renewal IHA	Density	Level A Harassment Zone (km ²)	Takes by Level A Harassment	Level B Harassment Zone (km ²)	Take by Level B Harassment
Center Wall - Install Foundation Support Piles	20 drilled shafts	Rotary Drill	6	3	0.00001	0	0.41742	8
		Rotary Drill	6	3	0.00009	0	0.41742	8
		Rotary Drill	10	3	0.00000	0	0.41742	13
		Cluster drill DTH	117	3	0.41742	146	0.41742	0
Center Wall – Install Tie-In to Existing West Closure Wall	16 sheet piles	Initial vibratory set	4	3	0.00008	0	0.41742	5
		Impact	4	3	0.20116	2	0.41742	3
P-310 West Closure Wall – Remove Closure Wall	238 sheet piles	Vibratory extraction	60	3	0.00002	0	0.41742	75
P-310 West Closure Wall - Mechanical Rock Excavation	985 cy	Hydraulic rock hammering	77	3	0.41742	96	0.277858	0
P-310 West Closure Wall - Mechanical Rock Excavation	Drill 500 relief holes	Mono-hammer DTH	20	3	0.01455	1	0.41742	24
West closure wall-Berth 11 Abutment – Install Piles	Drill 28 shafts	Mono-hammer DTH	28	3	0.41742	35	0.41742	0
Berth 11 – Remove Shutter Panels	112 panels	Hydraulic rock hammering	10	3	0.41742	13	0.277858	0
Berth 11 Face - Mechanical Rock	3,500 cy	Hydraulic rock hammering	80	3	0.41742	100	0.277858	0

Removal at Basin Floor	Drill 1,277 relief holes	Mono-hammer DTH	37	3	0.01455	2	0.41742	45
Berth 11 Face - Mechanical Rock at Abutment	Drill 365 rock borings (1,220 cy)	Mono-hammer DTH	183	3	0.41742	229	0.41742	0
Dry Dock 1 North Entrance - Drill Tremie Tie Downs	Drill 50 rock anchors	Mono-hammer DTH	25	3	0.00903	1	0.41742	31
Dry Dock 1 North Entrance - Install Temporary Cofferdam	Install 48 sheet piles	Initial vibratory set	6	3	0.00104	8	0.41742	0
		Impact	6	3	0.36495	7	1.50227	1
Berth 1 – Remove Sheet Piles	Remove 12 sheet piles	Hydraulic rock hammering	3	3	0.41742	4	0.277858	0
Berth 1 Mechanical Rock Removal at Basin Floor	200 cy	Hydraulic rock hammering	39	3	0.41742	49	0.277858	0
Removal of Berth 1 Emergency Repair Sheets	108 sheet piles	Vibratory extraction	18	3	0.00014	0	0.41742	23
Removal of Berth 1 Emergency Repair Tremie Concrete	500 cy	Hydraulic rock hammering	15	3	0.41742	19	0.277858	0
Total Estimated Take						704	--	244

Table 4. Calculated Take by Level A and Level B Harassment of Grey Seal by Project Activity for the Proposed Renewal IHA

Activity	Total Amount	Method	Number of Production Days under Renewal IHA	Density	Level A Harassment Zone (km ²)	Takes by Level A Harassment	Level B Harassment Zone (km ²)	Take by Level B Harassment
Center Wall - Install Foundation Support Piles	20 drilled shafts	Rotary Drill	6	0.02	0.00001	0	0.41742	1
		Rotary Drill	6	0.02	0.00009	0	0.41742	1
		Rotary Drill	10	0.02	0.00000	0	0.41742	1
		Cluster drill DTH	117	0.02	0.41742	10	0.41742	0
Center Wall – Install Tie-In to Existing West Closure Wall	16 sheet piles	Initial vibratory set	4	0.02	0.00008	0	0.41742	0
		Impact	4	0.02	0.20116	0	0.41742	0
P-310 West Closure Wall – Remove Closure Wall	238 sheet piles	Vibratory extraction	60	0.02	0.00002	0	0.41742	5
P-310 West Closure Wall - Mechanical Rock Excavation	985 cy	Hydraulic rock hammering	77	0.02	0.41742	6	0.277858	0
P-310 West Closure Wall - Mechanical Rock Excavation	Drill 500 relief holes	Mono-hammer DTH	20	0.02	0.01455	0	0.41742	2
West closure wall-Berth 11 Abutment – Install Piles	Drill 28 shafts	Mono-hammer DTH	28	0.02	0.41742	2	0.41742	0
Berth 11 – Remove Shutter Panels	112 panels	Hydraulic rock hammering	10	0.02	0.41742	1	0.277858	0
Berth 11 Face - Mechanical Rock	3,500 cy	Hydraulic rock hammering	80	0.02	0.41742	7	0.277858	0

[illegible]

Table 5 summarizes the proposed take for authorization for all species described as a percentage of stock abundance.

Table 5. Proposed Take Estimates as a Percentage of Stock Abundance

Species	Stock (N _{EST})	Proposed Level A harassment	Proposed Level B harassment	Percent of Stock
Harbor porpoise	Gulf of Maine/Bay of Fundy (95,543)	10	2	< 0.1
Harbor seal	Western North Atlantic (61,336)	695	240	< 0.1
Gray seal	Western North Atlantic (27,300)	45	18	< 0.1
Hooded seal	Western North Atlantic (593,500)	0	5	< 0.1
Harp seal	Western North Atlantic (7.6 million)	0	5	< 0.1

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the FR Notice announcing the issuance of the initial IHA (April 6, 2022, 87 FR 19886), and the discussion of the least practicable adverse impact included in that document remains accurate. The same measures are proposed for this renewal and are summarized here:

- The Navy must delay pile driving activities should poor environmental conditions restrict full visibility of the applicable shutdown zones;
- The Navy must ensure that all construction supervisors and crews, the monitoring team, and relevant Navy staff are trained prior to commencing work;
- The Navy must implement a 10 m shutdown zone around construction activities to avoid direct physical interaction with marine mammals;
- The Navy must establish and implement shutdown and monitoring zones for

all pile driving activities based on the activity type and marine mammal hearing group (see Table 13 in the FR Notice announcing the issuance of the initial IHA (April 6, 2022, 87 FR 19886) for the proposed shutdown and monitoring zones);

- The Navy must implement soft start techniques while impact driving whereby hammer energy is gradually ramped up;
- The Navy must install a bubble curtain across any openings at the entrance of super flood basin to attenuate sound for the sound sources that encompass the entire ROI, which include during DTH excavation (DTH mono-hammer and cluster drill), hydraulic rock hammering, and impact pile driving of sheet piles;
- The Navy must employ at least three protected species observers (PSOs) to monitor the shutdown and monitoring zones;
- The Navy must monitor for the presence of marine mammals 30 minutes prior to the initial pile-driving activity (*i.e.*, pre-start clearance monitoring) through 30 minutes post-completion of pile driving activity. If a marine mammal is observed entering or within the shutdown zones, pile driving will be delayed or halted;
- The Navy will delay or halt pile driving activities upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone;
- The Navy will conduct a sound source verification study for rotary drilling, DTH excavation (DTH mono-hammer and cluster drill), and rock hammering activities for any remaining piles required to be monitored following their acoustic monitoring plan as described in the FR Notice announcing the issuance of the initial IHA (April 6, 2022, 87 FR 19886);
- The Navy must submit a draft report detailing all monitoring within ninety calendar days of the completion of marine mammal monitoring or sixty days prior to the

issuance of any subsequent IHA for this project, whichever comes first;

- The Navy must prepare and submit final report within thirty days following resolution of comments on the draft report from NMFS;
- The Navy must submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above); and
- The Navy must report injured or dead marine mammals.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (March 3, 2022, 87 FR 11860) and solicited public comments on both our proposal to issue the initial IHA for the Navy's construction activities and on the potential for a renewal IHA, should certain requirements be met. During the 30-day public comment period, NMFS received no comments on either the proposal to issue the initial IHA for the Navy's construction activities or on the potential for a renewal IHA.

Preliminary Determinations

The proposed renewal request consists of a subset of activities analyzed through the initial authorization described above. In analyzing the effects of the activities for the initial IHA, NMFS determined that the Navy's activities would have a negligible impact on the affected species or stocks and that authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.*, less than one-third the abundance of all stocks). Although new SPL information became available for DTH and rock hammering, none of this new information affects NMFS' determinations supporting issuance of the initial IHA. The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS

has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to the Navy for construction activities associated with the multifunctional expansion of Dry Dock 1 project at Portsmouth Naval Shipyard in Kittery, from the date of issuance through March 31, 2024, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. We request comment on our analyses, the proposed renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: March 9, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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